

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1455

B

P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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Docket No. 74-1455

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UNITED STATES OF AMERICA,

Appellee,

-against-

LINDA SCHWARZ,

Defendant-Appellant.

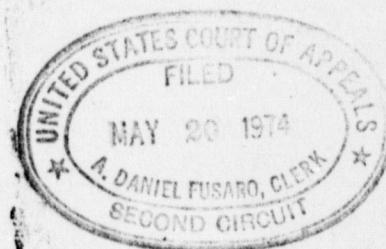
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APPENDIX FOR APPELLANT

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DILLER & SCHMUKLER, ESQS.  
HOWARD J. DILLER  
Attorney for Appellant  
299 Broadway  
New York, New York 10007  
(212) 349 5554

LAWRENCE STERN  
of counsel



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TPP:JOB:sj  
F# 741,054

IN CLERK'S OFFICE  
DISTRICT COURT E.D. NY  
FEB 16 1974

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

74CR 119

UNITED STATES OF AMERICA

- against -

LINDA H. SCHWARZ,

Defendant.

INFORMATION

Cr. No. \_\_\_\_\_  
(T. 21, U.S.C., §841(a)(1))

THE UNITED STATES ATTORNEY CHARGES:

On or about the 11th day of January 1974, within the Eastern District of New York, the defendant LINDA H. SCHWARZ did knowingly and intentionally possess with intent to distribute approximately four (4) ounces of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

Edward J. Boyle II / JIB  
UNITED STATES ATTORNEY

ONLY COPY AVAILABLE



74 CR 119

2  
TRAVIA, J.

APPEAL

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

vs.

LINDA SCHWARZ

CLOSED

For Defendant:

Howard Diller

299 Broadway, NYC.

349-5554

Did possess cocaine

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,

4-8-74

Notice of Appeal

5-

Clerk,

4-9-74

Paid to Press

Marshal,

Attorney,

Commissioner's Court,

Witnesses,



DATE

PROCEEDINGS

- 2-19-74 Information and Waiver of Indictment filed.
- 2-19-74 Before MISHLER, CH J - case called - deft & counsel Howard Diller present - Waiver/signed - deft arraigned and after being advised of her rights and on her own behalf enters a plea of guilty as charged - sentence set for Mar. 22, 1974.
- 2-19-74 Notice of Appearance filed.
- 2-22-74 Before Travia J - case called for sentencing-Marked Off.
- 3-22-74 Before TRAVIA J - case called - deft & counsel H.Diller present. case adjd to Mar. 25, 1974 at 4:00 PM (for sentence)
- 3-25-74 Before TRAVIA J - case called - deft & counsel Howard Diller present - deft is sentenced to imprisonment for 4 years pursuant

74 CR 119

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	execution of sentence is granted to 4-1-74 at 10:00 am.		
3-25-74	Judgment & Commitment filed - certified copies to Marshal.		
4-2-74	Notice of Motion filed, ret. 4-5-74, for continuing the deft on her own recognizance pending appeal or in the alternative for an order setting reasonable bail, etc.		
4-2-74	Notice of Appeal filed.		
4-2-74	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.		
4-5-74	Before TRAVIA J - case called - motion argued and denied (for continuing on O.R. pending appeal or setting bail)		
4-11-74	Order received from the Court of Appeals filed that the record be docketed by or before April 22, 1974.		
4-15-74	Certified copy of Judgment & Commitment ret'd and filed - deft. delivered to Federal Detention Headquarters.		
4-15-74	Stenographers transcript dated March 25, 1974 filed.		
4-16-74	Stenographers transcript dated April 5, 1974 filed.		
4-16-74	Copy of Order received from Court of Appeals and filed that deft's motion to be released on her own recognizance pending appeal is granted		

A TRUE COPY  
 ATTEST  
 DATED 4/16/74  
 DEPUTY CLERK  
 BY [Signature]  
 DEPUTY CLERK



## United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

M'FILED

United States of America

v.

LINDA H. SCHWARZ

No. 74-CR-119

CLERK'S OFFICE  
DISTRICT COURT ED. N.Y.

MAR 25 1974

RECEIVED  
FILE

On this 25th day of MARCH, 1974, came the attorney for the government and the defendant appeared in person and with counsel Howard Diller, Esq.

IT IS ADJUDGED that the defendant upon her plea of<sup>2</sup> guilty, and the Court being satisfied that there is a factual basis for the plea, has been convicted of the offense of violating Title 21, U.S.C. Section 841(a)(1)

as charged<sup>3</sup> and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of<sup>4</sup> FOUR (4) years pursuant to Section 4208(a)(2) of Title 18 U.S. Code, plus 3 years Special Parole Term, as charged. The Court after findings, Y. C. A. Treatment is denied. Stay of execution of sentence is granted to April 1, 1974 at 10:00 A.M.

IT IS ADJUDGED that<sup>5</sup>

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other authorized officer.

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----X  
5 UNITED STATES OF AMERICA :

6 -against- :

7 LINDA SCHWARTZ, :

F#741054

8 Defendant. :

9 -----X

10  
11 United States Courthouse  
Brooklyn, New York

12 February 19, 1974  
13 9:30 a.m.

14  
15 Before:

16 HONORABLE JACOB MISHLER, Chief U.S.D.J.

17  
18  
19 FOR WAIVER OF INDICTMENT AND FILING OF INFORMATION

20  
21  
22  
23 HENRI LeGENDRE  
24 COURT REPORTER  
25



**Appearances:**

EDWARD J. BOYD, V, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: J. O'BRIEN, ESQ.  
Assistant United States Attorney

HOWARD J. DILLER, ESQ.  
Attorney for Defendant

- - -

1 THE COURT: Linda Schwarz, how old are you?

2 MISS SCHWARZ: Twenty-five.

3 THE COURT: Have you seen a copy of the infor-  
4 mation that the Government intends to file?

5 MISS SCHWARZ: Yes, I have.

6 THE COURT: Do you know you have a constitutional  
7 right to have the case submitted to a Grand Jury?

8 MISS SCHWARZ: Yes.

9 THE COURT: And the Grand Jury may or may not  
10 indict you, you understand that?

11 MISS SCHWARZ: Yes.

12 THE COURT: The Government can't file an infor-  
13 mation on this charge unless you waive that right to  
14 have it submitted to a Grand Jury. Are you ready to  
15 waive that right?

16 Go over it with Mr. Diller, when you are satis-  
17 fied with it, sign it and Mr. Diller witness it.

18 THE CLERK: Waiver signed and witnessed, your  
19 Honor.

20 THE COURT: How do you plead to the information?

21 MISS SCHWARZ: Guilty.

22 THE COURT: Before the Court considers the plea,  
23 I must advise you as to the nature of the charge  
24 against you, your constitutional rights and the conse-  
25 quences of your plea. Do you understand the reason



1 for this inquiry?

2 MISS SCHWARZ: Yes.

3 THE COURT: Do you understand and have you been  
4 advised if you went to trial on this charge you would  
5 be entitled to a public and speedy trial before a jury  
6 with the assistance of counsel?

7 MISS SCHWARZ: Yes.

8 THE COURT: If you went to trial on this charge  
9 you would be entitled to compulsory process to bring  
10 in witnesses in your own behalf.

11 MISS SCHWARZ: Yes.

12 THE COURT: And you would be entitled to be  
13 confronted by witnesses before you, that means you or  
14 your lawyer would be entitled to examine Government  
15 witnesses.

16 MISS SCHWARZ: Yes.

17 THE COURT: If the plea of guilty is accepted  
18 there will be no trial on this charge, you would be  
19 effectively waiving those constitutional rights; do  
20 you understand that?

21 MISS SCHWARZ: Yes.

22 THE COURT: The charge is as follows: The United  
23 States Attorney charges on or about the 11th day of  
24 January, 1974, within the Eastern District of New York,  
25 the defendant Linda Schwarz knowingly and intentionally

1 possessed approximately four ounces of cocaine, a  
2 Schedule 2 Narcotic substance, 21 United States Code  
3 841(a)(1). You understand that you are charged with  
4 having in your possession four ounces of cocaine with  
5 intent to sell it or deliver it in some manner, to  
6 give it to someone for someone else's use; do you  
7 understand that?

8 MISS SCHWARZ: Yes.

9 THE COURT: And that what you did, you did  
10 knowingly and intentionally, that means that you are  
11 aware of what you are doing and that you possessed it  
12 knowing and understanding that you were violating the  
13 law and that possession was with the intention of  
14 violating the law; you understand that?

15 MISS SCHWARZ: Yes.

16 THE COURT: That is a voluntary decision, choice  
17 on your part; do you understand that?

18 MISS SCHWARZ: Yes.

19 THE COURT: Did you do what you are charged  
20 with doing?

21 MISS SCHWARZ: Yes.

22 THE COURT: Was it done knowingly and inten-  
23 tionally?

24 MISS SCHWARZ: Yes.

25 THE COURT: You tell me what your participation



1 in the matter was, what did you do?

2 MISS SCHWARZ: I was delivering it.

3 THE COURT: Did you know it was cocaine?

4 MISS SCHWARZ: Yes.

5 THE COURT: Delivering it to someone else?

6 MISS SCHWARZ: Yes.

7 THE COURT: Did you know who you were delivering  
8 it to?

9 MISS SCHWARZ: Yes.

10 THE COURT: Have any promises of any kind  
11 including any promise or suggestion as to what sentence  
12 would be imposed been made to you by your lawyer, the  
13 U.S. Attorney, the Court or anyone else to induce a  
14 plea of guilty? Did anyone promise you anything to get  
15 you to plead guilty to this offense?

16 MISS SCHWARZ: No.

17 THE COURT: Did you understand it that way?

18 MISS SCHWARZ: No.

19 THE COURT: Has your attorney expressed any  
20 opinion or made any prediction as to what sentence will  
21 be imposed? Did he say, for example, this is an easy  
22 judge, you'll be probated or you will get a year or two  
23 years or anything like that?

24 MISS SCHWARZ: No.

25 THE COURT: Have you been threatened or coerced

by anyone into making this plea of guilty?

MISS SCHWARZ: No.

THE COURT: Are you pleading guilty to this offense voluntarily of your own free will because you are guilty and for no other reason?

MISS SCHWARZ: Yes.

THE COURT: Have you discussed your plea of guilty fully with your attorney?

MISS SCHWARZ: Yes.

THE COURT: And you say you are twenty-five years of age?

MR. DILLER: She'll be 26 on the 26th day of March, five days away.

THE COURT: It isn't important to advise you of the possibility of being sentenced under the Youth Correction Act; the maximum sentence is more than that under that section. Do you know what the maximum sentence which the Court may impose in this case is? Under the statutory sentence, the sentence fixed in the statute under 841(a)(1) -- have you discussed that with Mr. Diller?

MISS SCHWARZ: Yes.

THE COURT: What was the maximum sentence which may be imposed?

MISS SCHWARZ: Zero to 15.



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THE COURT: I am not interested in the zero.  
I want you to know that the maximum is 15 years, that's  
what's important to me.

In addition to that, the Court, if it sentences  
you to a term, must impose a special parole term of not  
less than three years; did you know that?

MISS SCHWARZ: Yes.

THE COURT: And in addition to that, the Court  
may impose a fine not in excess of \$25,000; did you  
know that?

MISS SCHWARZ: Yes.

THE COURT: Having been advised as to your  
constitutional rights, the nature of the charge against  
you and the consequence of your plea, how do you plead  
to the information?

MISS SCHWARZ: Guilty.

THE COURT: The Court finds there is a factual  
basis for the plea and accepts the plea of guilty to  
the information.

Now, probation will be here. Will you take her  
down to probation.

MR. DILLER: I'll take her down.

THE COURT: They will ask you lots of questions  
about your marital status, work record, family relation-  
ship.

1 MR. DILLER: I have gone over that with her.  
2 The only thing, if we could possibly have your Honor  
3 set a date for sentencing because of the fact that her  
4 26th birthday is on March 26th; if your Honor would  
5 suggest an earlier date than that, because of the  
6 Youth Correction Act.

7 THE COURT: Suppose you get Probation on the  
8 wire. This is no indication that you be sentenced  
9 under the Youth Correction Act; the point is, if I  
10 sentence you after your 26th birthday I have no power,  
11 that's the only reason Mr. Diller suggests it. I  
12 don't want you to think that that's what you'll be  
13 sentenced under.

14 MR. DILLER: Yes, I expressed that to her.

15 THE COURT: I'm taking this case, I'm in  
16 Miscellaneous Part. There is one chance out of eight  
17 that I will sentence you, it will come out of a drum.

18 What I would like to do is send this down to  
19 the Clerk's office and find out who the judge is going  
20 to be and then I'll send the memo to him, telling him  
21 at your request I fixed it at a time before your 26th  
22 birthday. We'll put it on for March 22nd, that's a  
23 Friday. The reason I do that, most judges sentence  
24 on a Friday. I don't think the probation report could  
25 be completed before that. I would suggest that you



1 give as full and complete a report as possible and  
2 when you go down to Probation, to tell them that was  
3 a special request of mine. If they want to check back,  
4 ask them to call me. Ask the Criminal desk clerk to  
5 pick a name out and remind me to send a memo to that  
6 judge. Check back with my office and they will tell  
7 you whose name is picked. I'll send a memo and explain  
8 the reason for my fixing a date, usually it's Probation;  
9 so it's March 22nd at 10 o'clock, before some judge.

10 MR. DILLER: We'll go down to Probation now.

11 THE COURT: She may continue on her own recog-  
12 nizances.

13 MR. O'BRIEN: No objection.

14 (Whereupon, the matter was concluded.)

15 \* \* \*

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

- against - :

74 CR 119

LINDA SCHWARZ, :

Defendant. :

-----X

United States Courthouse  
Brooklyn, New York

March 25, 1974  
4:00 o'clock p.m.

B e f o r e :

HONORABLE ANTHONY J. TRAVIA,

U. S. D. J.

HENRY SHAPIRO  
Official Court Reporter.



**A p p e a r a n c e s :**

**EDWARD J. BOYD, ESQ.**  
**United States Attorney**  
**for the Eastern District of New York**

**BY: MISS JOAN O'BRIEN,**  
**Assistant U. S. Attorney**

**H. DILLER, ESQ.**  
**Attorney for Defendant**  
**299 Broadway**  
**New York, New York 10007**

-----

1 THE COURT: Mr. Diller is the attorney for  
2 the defendant. 000 17

3 Mr. Guisti, would you please give Mr. Diller  
4 a copy of the Probation Report. I have attached  
5 all the letters that I have received.

6 Please read it, discuss it with the defendant,  
7 and then I will ask you the usual questions before  
8 we get involved.

9 MR. DILLER: Thank you.

10 (Recess taken.)

11 (After recess.)

12 THE CLERK: Criminal Court for sentence,  
13 United States of America versus Linda Schwarz.

14 THE COURT: Miss O'Brien, how are you?

15 MISS O'BRIEN: Fine. Thank you, your Honor.

16 THE COURT: I said hello to you, Mr. Diller,  
17 earlier.

18 Now, let's get ourselves in perspective  
19 here. Mr. Diller, I sent out to you earlier my  
20 copy of the presentence report concerning this  
21 defendant. And attached to it I placed under a  
22 clipping a series of letters that were received  
23 by the Court concerning this defendant and asked  
24 that you look it over, read it all and discuss it  
25 with your client, and then I would ask you the



1 usual questions.

2 First, is there anything in that report which  
3 you feel is inconsistent with the facts as you know  
4 them, that you feel ought to be brought to my atten-  
5 tion?

6 MR. DILLER: Yes. Actually, I have four  
7 items that I listed.

8 THE COURT: Please.

9 MR. DILLER: After discussing it with Linda  
10 Schwarz.

11 There is an implication in the early part of  
12 the report that the co-defendant indicated that her  
13 source of supply flies to South America and thus  
14 is a very good source of supply. Of course, Linda  
15 has never been to South America and --

16 THE COURT: Well, I don't think the report  
17 states that.

18 MR. DILLER: But there is an implication.  
19 I just thought in reading it you would get the  
20 inference that Linda was the one who was being  
21 referred to as the South American source of supply.  
22 Linda has never been to South America. And I  
23 wouldn't want your Honor --

24 THE COURT: I assure you I didn't.

25 MR. DILLER: Certainly, that would make it

1 a lot different picture.

2 THE COURT: Sure. But I didn't make any  
3 such finding in my own mind.

4 MR. DILLER: The other thing, the probation  
5 officer indicated that there was a search of Linda's  
6 apartment where there was two ounces of marijuana  
7 and two ounces of cocaine. Linda tells me that  
8 there was the search, indeed, and it was only  
9 an eighth of an ounce of marijuana and approximately  
10 three grams of cocaine, which is a rather substan-  
11 tial difference.

12 Also, she denies ever having --

13 THE COURT: Like the story that I always  
14 like to tell, she is only a little bit pregnant.

15 MR. DILLER: It indicates something, however.

16 THE COURT: Okay.

17 MR. DILLER: This is not in terms of justi-  
18 fication.

19 THE COURT: I know. Nor did I tell you that  
20 little parable of mine for any other motive than  
21 to say, you know, a little or a lot, but it's  
22 there.

23 MR. DILLER: Yes. That, indeed, is true.

24 Also, she denies having acknowledged to the  
25 agents that she ever sold small quantities of



1 cocaine for a short period of time prior to her  
2 arrest.

3 The fourth item --

4 THE COURT: She doesn't want to admit it.

5 MR. DILLER: Well, she tells everything.

6 After her arrest she said where she got it and  
7 what she did. And it would seem that there would  
8 be no motive for her to lie about this. If she  
9 tells me that she sold an ounce the day before,  
10 and she even tells them where she got the stuff --  
11 you know, her source of supply in terms of cooper-  
12 ation.

13 There is just one other item that -- she's  
14 employed and has been for the last few weeks.  
15 She works for Exposition, Ltd. I think in the  
16 probation report it indicates she worked prior --  
17 she's employed as an artist on the staff and earns  
18 \$150 when she was off unemployment insurance.  
19 Those are the only items I felt constrained to  
20 bring to your Honor's attention with respect to  
21 the report.

22 THE COURT: Well, according to the report,  
23 it indicates from October 3rd to the present --

24 MR. DILLER: She was unemployed.

25 THE COURT: She had her job as an art director

and received unemployment insurance benefit checks  
and you say --

MR. DILLER: Now she's employed again.

THE COURT: In other words, you are telling  
me now that she has then since that time been employed.

MR. DILLER: For the last few weeks.

THE COURT: For whom?

MR. DILLER: Exposition. I think she indi-  
cated she worked there two years earlier.

THE COURT: Before that, in '71?

MR. DILLER: Right.

THE COURT: Exposition Limited.

MR. DILLER: And she's been reengaged by that  
firm.

THE COURT: Since --

MR. DILLER: About three weeks ago. And she's  
working as an artist doing art production and she's  
earning 150 --

THE COURT: She was a freelance artist for  
them at that time?

MR. DILLER: Yes. That's correct.

THE COURT: Is there anything else in the  
report?

MR. DILLER: Nothing with respect to the  
report.



1 THE COURT: Right now I want to stick to the  
2 report.

3 MR. DILLER: Yes.

4 THE COURT: And I think we ought to state  
5 in the record any discussion that ought to be on  
6 the record regarding the applicability in this case  
7 of YCA. It was purposely put on today because  
8 tomorrow I believe is the so-called deadline date.--

9 MR. DILLER: That's correct.

10 THE COURT: -- when she will become --

11 MR. DILLER: 26.

12 THE COURT: -- 26 years of age. The date  
13 of her birth, as I understand from the report,  
14 was March 26, 1948. I assume that's correct.

15 MR. DILLER: That is, yes.

16 THE COURT: Today being March 25th raises  
17 that question. So do you want to discuss that  
18 first, Mr. Diller?

19 MR. DILLER: Yes. I would appreciate the  
20 opportunity.

21 THE COURT: Because I want it known that  
22 the Court is aware of it, the possibility of the  
23 imposition of sentence pursuant to the Youth  
24 Correction Act rather than the adult sentence  
25 which she faces in this case. So I want to give

1 you all the opportunity you want with regard to  
2 that. Go right ahead.

3 MR. DILLER: If your Honor please, with  
4 respect to the applicability of the Youth Correction  
5 Act to Miss Schwarz, I cannot imagine a person  
6 involved in any way with a cocaine violation or  
7 violation of the Federal Narcotic laws that would  
8 present a better picture or a person that should  
9 be more eligible.

10 First of all, she has never had a conflict  
11 with the law. She hasn't even been arrested. She  
12 has a real first class background. She is a  
13 college graduate. She has a good work record,  
14 excellent family, and, indeed, performed a very  
15 stupid thing here. Indeed, a criminal act.

16 And it would seem to me that Linda Schwarz  
17 is entitled to a second bite of the apple here.  
18 She doesn't --

19 THE COURT: She is not the average type of  
20 defendant where that argument might be more appli-  
21 cable than in this case. That's what I want you  
22 to distinguish.

23 In other words, she's not the ordinary so-  
24 called individual who --

25 MR. DILLER: Poor family --



1 THE COURT: (Cont'g) -- doesn't know the  
2 nature of her act or that she comes from such  
3 terrible circumstances that the family -- she became  
4 involved. This young lady was in a different sphere  
5 of influence entirely, brought up differently.  
6 She's been to college. She's graduated from  
7 college. So that she cannot argue from the  
8 point of view that she was so-called ignorant of  
9 what was going on or that she was befuddled or  
10 was drawn into a picture or didn't know what was  
11 going on. Not the usual dumb kid who is dragged in.

12 MR. DILLER: Indeed. She never even said  
13 that she knew that was wrong when she was doing it,  
14 nor does she come to court and say, "Your Honor,  
15 I didn't know that it was so serious or wrong.

16 She admitted that all the way in discussing  
17 it with me and with the probation department. She  
18 doesn't now say that this was right or that she  
19 did not know that it was wrong, but rather that  
20 she recognizes how foolish she was.

21 This wasn't, by the way, heroin. This was  
22 cocaine. And regrettably, cocaine has become a  
23 drug that is unfortunately being used --

24 THE COURT: The girl hasn't said that yet.

25 MR. DILLER: I know that. That's almost

1 what I have to characterize as -- such as a recrea-  
2 tional drug.

3 THE COURT: They are trying to say that  
4 about marijuana. That hasn't been done yet either.

5 MR. DILLER: Nor is this an excuse. We  
6 are not putting it forth as that. The only thing  
7 is that this is not a criminal type person. This  
8 isn't one who makes a living from the criminality  
9 of cocaine or any other kind of criminality.

10 And would society really benefit if Linda  
11 Schwarz were sent to prison? Would anybody be  
12 deterred? Would she be rehabilitated?

13 From my experience in working with her for  
14 the last few months I am impressed that she really  
15 has learned her lesson. Her nervousness, her anxiety  
16 is something I haven't seen with anyone else.  
17 Frankly, I never had a client like Linda Schwarz  
18 involved. Everybody I had has a criminal element,  
19 criminal background, who can't give an account for  
20 themselves.

21 There is nothing to indicate that she lived  
22 off the proceeds of this business, that she lived  
23 beyond her means. Everything is consistent in  
24 Linda's background with hard working, a decent human  
25 being who foolishly got involved. And we are only



pleading for the opportunity that she be placed on probation, that she learned her lesson, and with the understanding that if there should be any variance from propriety, that she has to face up to the consequences.

And I don't anticipate and I don't think it is realistic in terms of any -- that we will see her again in terms of any conflict with the law. And with the Youth Correction Act this won't be a stumbling block to her future because, as I understand it, ultimately after a period of probation the record becomes like expunged where she won't be encumbered for the rest of her life, since she is young and should have a good future. She is a bright girl. She is planning to marry a nice young fellow next month.

THE COURT: She is just about at that age where one more day would not have given you this opportunity to even make this plea.

MR. DILLER: That's correct.

THE COURT: So when you say she's young -- sure, I wish I was young at 25 or 26. But not that young that we don't know what we are doing at that stage.

MR. DILLER: That's true enough.

1 THE COURT: It's not like dealing with a  
2 youngster who comes out of the ghetto, who grows  
3 up to know nothing that is right except to commit  
4 one crime after another to satisfy whatever may  
5 be his problem at the time.

6 MR. DILLER: And interestingly, she did not  
7 need the money.

8 THE COURT: Of course not.

9 MR. DILLER: She had a good inheritance,  
10 good job.

11 THE COURT: I understand that from the  
12 report. It's not that I haven't seen this report.  
13 I digested it. That's the reason I insisted on  
14 putting it over. I also made sure that my conferee  
15 judges with whose judgment I am not bound in any  
16 way -- as you know --

17 MR. DILLER: Yes, surely.

18 THE COURT: (Cont'g) -- would have an  
19 opportunity to see the case and make a recommenda-  
20 tion. And I want you to know I have received  
21 them. But don't let me interfere with your  
22 argument. Go right ahead.

23 MR. DILLER: I just wish to impress the  
24 Court that we sincerely and respectfully feel  
25 that the Youth Correction Act ought to apply



1 with its scope as to Linda, and that your Honor  
2 sees fit to place her on probation that she could  
3 demonstrate that she doesn't have a criminal pro-  
4 pensity and she could live as a decent citizen  
5 in the community, and that the community would  
6 not benefit in getting its so-called pound of  
7 flesh from Linda for what she has done in this  
8 instance. And we ask that your Honor be as lenient  
9 as possible.

10 THE COURT: Well, Mr. Diller, you know that  
11 I don't take sentences lightly.

12 MR. DILLER: I know that.

13 THE COURT: I think you heard me say many  
14 times I've got youngsters myself. But for the  
15 grace of God, maybe one of them might be before  
16 me for something like this. So that I am fully  
17 aware of the circumstances here. And a crime was  
18 committed. And a youngster of this age and this  
19 caliber, of this type of background and education,  
20 pretty much cannot plead ignorance. And I have  
21 taken all things very much into consideration.  
22 I think you know as well as I that I am referring  
23 now to a very recent Court of Appeals case which  
24 I am sure you are aware of, United States against  
25 Taylor and Hopkins, where the Court of Appeals

1 vacated and remanded back to this Court for resenten-  
 2 cing and seemed to indicate some guideline by which  
 3 the Court ought to be at least aware of before  
 4 sentencing in the case of one entitled to the  
 5 sentencing under the provisions of the Youth  
 6 Correction Act.

7 You know which case I am talking about?

8 MR. DILLER: Yes.

9 THE COURT: The Court in that case said very  
 10 specifically, and I quote now, "We hold also that  
 11 while no prescribed formula or litany, for such  
 12 a statement. And that's why I should not sentence  
 13 some of the Youth Correction Act -- a statement  
 14 is nevertheless called for and the District Judge  
 15 should not only mention his own awareness of the  
 16 act that is applicable to the case, but he should  
 17 also indicate that he's been informed," etc., etc.  
 18 You know which part I am talking about. I am sure  
 19 you read it.

20 MR. DILLER: Yes.

21 THE COURT: So I am not talking about a  
 22 particular case. I don't believe the facts in  
 23 that case are similar to this kind of a case at  
 24 all. A different matter was involved. It was a  
 25 659 charge under Title 18. It didn't involve drugs.



1 But nevertheless I am willing to apply  
2 those arguments to this case. And I don't find,  
3 frankly, that I should in any way consider at  
4 this time sentencing her under the provisions of  
5 the Youth Correction Act. I have read this pre-  
6 sentence report maybe five times already. I read  
7 every letter that was sent to me by a number of  
8 people which I have shown you.

9 MR. DILLER: Yes.

10 THE COURT: I don't have to at this time, I  
11 am sure -- unless you want me to indicate them  
12 one by one on the record --

13 MR. DILLER: No, it's not necessary.

14 THE COURT: (Cont'g) -- these letters.  
15 And, you know, I can't just turn my head and just  
16 not consider them. I have considered every one  
17 of them.

18 I think as a result of a thorough consider-  
19 ation of this report and all these letters I have  
20 received, I think I have been informed pretty  
21 much, to use the language of the Court of Appeals  
22 in that case, that I do indicate that I have been  
23 informed of the pertinent facts relating to this  
24 young lady. Certainly, from the presentence  
25 report and these letters I have received and from

1 your remarks. And I must say, too, that I have  
2 discussed this case with my colleagues who are  
3 part of the so-called presentencing panel and I  
4 thought about it very thoroughly -- very thoroughly.

5 Before I make the statement that I wish  
6 to make with regard to that, Mr. O'Brien, would  
7 you want to say something at this point since we  
8 are first considering the question of whether or  
9 not she should -- when I say "she," this young  
10 lady, this defendant should be sentenced under  
11 the YCA rather than the adult provisions of the  
12 statute.

13 MISS O'BRIEN: Your Honor, I have no comment  
14 as to sentence at all.

15 THE COURT: Well, I can't disapprove of  
16 what you say, because if you did say something,  
17 well, I called for it. I grant to the Government  
18 always an opportunity to say something if they  
19 wish. Not necessarily tell me what to do, because  
20 I would resent that very highly. That's not your  
21 job. That's mine. Whether I like it or not, I  
22 have to take the bull by the horns and make such  
23 a decision.

24 So when you tell me you have nothing to say,  
25 that's okay with me. But I do at this time say



1 that I am well aware of all the facts of this case.  
2 I take very seriously the arguments made by Mr.  
3 Diller, counsel for the defendant. I also am in  
4 possession of a report from each of my colleagues.  
5 I make no secret about that. Because, you know,  
6 that is our procedure in this court where we have  
7 a sentencing panel made up of the probation  
8 department chief, the sentencing judge and the  
9 two conferring judges. So I am well aware of the  
10 entire matter.

11 If, Mr. Diller, you feel that Miss Schwarz  
12 wants to say something with regard to whether I  
13 should -- whether or not I should impose sentence  
14 under the YCA instead of the adult provisions of  
15 the law, you talk to her and if she wants to say  
16 something, I will be glad to listen to her.

17 THE DEFENDANT: I just want to say that  
18 I wasn't pleading ignorance as somebody from  
19 the ghetto. But I had knowledge.

20 THE COURT: I hope I didn't --

21 THE DEFENDANT: No.

22 THE COURT: I didn't mean that. I am  
23 not dealing here with the usual type of individual  
24 who comes before us where they have all the --  
25 these personal problems and family problems and

1 all that, things where they really might have an  
2 argument that they were unaware of all these rami-  
3 fications of the law.

4 MR. DILLER: No, we don't present such an  
5 argument.

6 THE COURT: So when you say you -- what  
7 you just said, I realize how you say it. So you  
8 may continue if you wish.

9 (Defendant confers privately with Mr. Diller.)

10 THE DEFENDANT: Nothing more than I stated  
11 in the letter.

12 THE COURT: Yes, which I also received.

13 THE DEFENDANT: How foolish it was. I hope  
14 to be given --

15 THE COURT: What's that?

16 THE DEFENDANT: I hope to given a chance to  
17 try again.

18 THE COURT: Just for the record at least,  
19 let me just -- I have a letter of March 18, 1974  
20 sent to me by -- maybe I ought to get the name.  
21 Would you, Mr. Diller, tell me who wrote this  
22 letter? Frank --

23 MR. DILLER: Frank Dana.

24 THE COURT: What is the name? Frank Dana?

25 MR. DILLER: He's in court, by the way.



1 THE COURT: Yes. Frank Dana, I assume, is  
2 your fiance?

3 THE DEFENDANT: Yes.

4 THE COURT: I see him here in court. And  
5 I have a copy of his letter.

6 By the way, every letter I received I also  
7 sent on to the chief of Probation, and which I  
8 showed you copies of, which would indicate that  
9 I passed them on, together with a letter by Mr.  
10 Noah Slutsky, dated March 19, 1974, a letter  
11 written by Mr. Richard D. Di Stefano, dated March  
12 13, 1974, a letter written by Mrs. Ina Batkin,  
13 dated March 15, 1974, a letter written by Nancy  
14 Garfield, which is undated, but from the postmark  
15 is -- it is marked March 14th, which I sent down  
16 to the Probation Department March 18th.

17 And I have a letter written by Mr. Frank  
18 Spinelli, the president of the 45 West Street  
19 Exposition Limited, dated March 7th. And I have  
20 an undated letter written by Mr. Michael Upson  
21 of the Board of Education. I don't know if he is  
22 from the Board of Education, but it's written on  
23 the Board of Education stationery, Office of the  
24 Principal. So I assume he is --

25 MR. DILLER: Yes, that's true.

1 THE COURT: Although he doesn't say so, I  
2 am sure he is. That, too, is undated. We ought  
3 to scold him, being from the Board of Education.  
4 But it's postmarked March 13th.

5 And then, of course, I have the longhand  
6 note from the defendant herself dated March 4,  
7 1973, which I also sent down to the Probation  
8 Department. Then a letter dated March 1, by  
9 Mr. Frederick Schwarz, which indicates that he  
10 is the brother --

11 MR. DILLER: That's correct.

12 THE COURT: (Cont'g) -- of this defendant.  
13 Right. And then I have a letter written by Mr.  
14 Louis Bronfman of the L. Bronfman Advertising  
15 Agency dated February 26.

16 All these letters that I have received, of  
17 course, express shock, disbelief, and their know-  
18 ledge and their friendship or other connection  
19 with this defendant. So that I am not unmindful  
20 of the letters. But I feel after doing a little  
21 soul-searching of my own, which I always do before  
22 sentence, and after considering all of the letters,  
23 the report before me by the Probation Department,  
24 the recommendations made by my colleagues of the  
25 sentencing panel, I have come to the conclusion



1 that I shall not sentence under the provisions of  
2 the Youth Correction Act, but shall sentence pur-  
3 suant to the provisions of the adult provisions  
4 of the law.

5 So, therefore, we can, if you want to say  
6 something --

7 MR. DILLER: There's nothing further to  
8 what we have already said.

2 9 THE COURT: Then I want to proceed to the  
10 sentencing.

11 MISS O'BRIEN: Your Honor, if I may.

12 THE COURT: You may.

13 MISS O'BRIEN: I haven't read -- I have read  
14 that opinion a few weeks ago, but I -- but I am  
15 not familiar with it. Is there a requirement  
16 that there be a specific finding of no benefits --

17 THE COURT: Specific --

18 MISS O'BRIEN: As to no benefits received,  
19 no benefits under the particular Act.

20 THE COURT: Well, the Court of Appeals says  
21 that we hold also that while no prescribed formula  
22 or litany for such a statement was called for,  
23 the District Judge should mention not only his  
24 own awareness that the Act is applicable to the  
25 case, but should indicate that he was informed --

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it relates to either by way of the evidence at the trial, a presentence report or otherwise, and should indicate that he has given consideration and related the facts of the individual to the applicable law.

Now, if you want to take an appeal on it and see if there is anything along the line that you suggest -- I think I'm aware of the applicability of YCA. I think I have thoroughly inquired into this report. There is no question that the Court has the discretion to use it or not, depending upon what is before it.

The point you raise is what --

MR. DILLER: Is that I was under the impression that the District Court had to make a specific finding that the defendant would not benefit, a finding of fact and --

MISS O'BRIEN: That she would benefit from the --

THE COURT: I believe under the present circumstances and what's been stated by me already that I think that can certainly be deduced from the remarks I have already made. But I certainly feel that in this case I don't believe that there is any reason for me to -- using the words of the



1 Court of Appeals -- recite any litany at all as to  
2 what needs to be done. I am of the opinion that  
3 after receiving this report, also having the benefit  
4 of the recommendation of my colleagues, and a  
5 discussion of this whole matter, and my own thorough  
6 consideration that I would go through at the time  
7 of the reading of this report, that I am finally  
8 convinced that I should not sentence under the  
9 Youth Correction Act.

10 MR. DILLER: Judge, just one random  
11 thought that is now working --

12 THE COURT: What?

13 MR. DILLER: This is a random thought that  
14 is working through my mind. Judge, I am just  
15 trying to reflect on hundreds of cases that I  
16 have been involved with. And I suspect that  
17 no one in the cocaine traffic should be entitled  
18 to this provision of law because I don't think  
19 anyone that I have ever seen came as close to the  
20 -- of being as pure as the driven snow, as it were,  
21 as relates to Linda. And perhaps it ought to be  
22 that way, that anyone who is involved with drugs  
23 should not be -- and this has been the case from  
24 '56 to '71, that the Youth Correction Act never  
25 applied to drug cases through all those years,

1 as I am aware of. But since the new law in '71,  
2 perhaps there is --

3 THE COURT: And which also made the senten-  
4 cing provision more lenient.

5 MR. DILLER: Yes. And I think perhaps a  
6 whole new look at those people involved took place.  
7 Congress looks at it a lot differently. For example,  
8 they did away with the mandatory provision. I can't  
9 imagine anyone --

10 THE COURT: Mandatory minimum.

11 MR. DILLER: Yes. I just cannot envision  
12 then anyone not entitled to it if Linda isn't,  
13 frankly.

14 THE COURT: Well, you have got to remember  
15 that you are not dealing with the usual type of  
16 person who is involved in the drug trade. You  
17 are -- insofar as knowledge or education is concerned.

18 MR. DILLER: That's true.

19 THE COURT: Here we don't have -- if I could  
20 use the word of a dumb kid who didn't know what she  
21 or he were doing. We have a person who in my judg-  
22 ment is far above the average, so that she knew what  
23 she was doing. She certainly knew the nature of  
24 what she was doing in that she was fooling around  
25 with stuff that was, you know, a little bit of



1 dynamite.

2 MR. DILLER: This is true. However, she  
3 wasn't a trafficker. She wasn't somebody that did  
4 this every day for a living. Certainly, there was  
5 no intelligence -- the Bureau of Narcotics had no  
6 intelligence of her being involved other than the  
7 single incident. And it seems to me a denial may  
8 be a little harsh.

9 THE COURT: I am not prepared to make a  
10 finding that she would in any way benefit by this  
11 YCA. I think on the contrary I find that I must  
12 in my thorough review -- and I might tell you,  
13 very searching review, and after my colleagues  
14 on the sentencing panel suggested the recommenda-  
15 tion, I am convinced that in this case I shall  
16 sentence under the adult provisions of the law.

17 Okay. Now we may proceed.

18 Miss Linda Henrietta Schwarz, you are the  
19 defendant named in this indictment, contained in  
20 file number 74 CR 119?

21 I am sorry. I said indictment. I mean  
22 information.

23 MR. DILLER: In formation.

24 THE COURT: You are?

25 THE DEFENDANT: Yes.

1 THE COURT: Mr. Diller is your retained or  
2 court-appointed --

3 MR. DILLER: Retained.

4 THE COURT: And Mr. Diller standing to your  
5 left is your retained attorney?

6 THE DEFENDANT: Yes.

7 THE COURT: And you want him to appear as  
8 your lawyer at this sentencing?

9 THE DEFENDANT: Yes.

10 THE COURT: Now, Mr. Diller, is there any  
11 reason why judgment should not now be pronounced  
12 against Miss Schwarz?

13 MR. DILLER: No.

14 THE COURT: Do you have any comments as to  
15 what the sentence should be or what the conditions  
16 or terms of the sentence should be? If you have --

17 MR. DILLER: Yes.

18 THE COURT: (Cont'g) -- feel at liberty.

19 MR. DILLER: The only thing I wish to add  
20 to what we have already stated is that now the  
21 Youth Correction Act will not apply to Linda,  
22 that at least the benefits of a probation do  
23 apply under the adult offender, and that I think  
24 she will benefit from it. And I don't think the  
25 community at large will really gain anything in



1 this case with respect to Linda being incarcerated.  
2 And, therefore, we would humbly and respectfully  
3 plead with your Honor to see fit to place Linda  
4 Schwarz on probation and not send her to a penal  
5 institution.

6 THE COURT: Miss Schwarz, is there any  
7 reason why judgment should not now be pronounced  
8 against you?

9 THE DEFENDANT: No.

10 THE COURT: Do you have any comments to  
11 make with respect to what the sentence should be  
12 or what the terms of -- in addition to what Mr.  
13 Diller has indicated to the Court --

14 THE DEFENDANT: No. I just hope that you  
15 will listen to Mr. Diller and sentence me to pro-  
16 bation.

17 THE COURT: Miss O'Brien?

18 MISS O'BRIEN: I have no comments.

19 THE COURT: No comment.

20 Probation Department, do you have anything  
21 to add?

22 PROBATION OFFICER: Nothing.

23 THE COURT: Miss Linda Henrietta Schwarz,  
24 is that the way she is named in the information?

25 MR. DILLER: Yes.

1 THE COURT: In the information she is named  
2 Lin'a H. Schwarz. I assume that the H. stands for  
3 Henrietta.

4 THE DEFENDANT: Yes.

5 THE COURT: All right. On your plea of  
6 guilty to the one-count information, which I just  
7 referred to, on February 19, 1974, you, Linda H.  
8 Schwarz, are committed to the custody of the  
9 Attorney General of the United States or his duly  
10 authorized representative who shall designate the  
11 place of confinement for a term of four years.  
12 I shall impose that sentence under the provisions  
13 of Title 18 Section 4208(a)(2). That's it.

14 MR. DILLER: Would your Honor suspend any  
15 part of that sentence?

16 THE COURT: I shall not. I imposed it pur-  
17 suant to 4208.

18 MR. DILLER: I am aware of that.

19 THE COURT: Which you know why. I will  
20 leave it to the Board of Parole. I don't want the  
21 Board of Parole to tell me what to do when I sentence,  
22 and I don't want to tell the Board of Parole when  
23 they consider -- they will have the opportunity  
24 to consider my sentence and whatever else they  
25 may have at the time of consideration. But I



1 shall make -- I might tell you now, I shall make  
2 no recommendation to the Board of Parole. I leave  
3 that entirely to them. My sentence will be, so far  
4 as the Board of Parole --

5 MR. DILLER: She will understand. I will  
6 explain to her that she will be eligible at any  
7 time the Board sets her conditions.

8 THE COURT: That's before the Board of Parole.  
9 I want you to know I will make no recommendation  
10 to the Board of Parole.

11 MR. DILLER: I am going to ask one thing  
12 from your Honor, that she have two weeks to surrender.  
13 She's been out on her own recognizance from the day  
14 of the arrest.

15 THE COURT: I appreciate that, but she's  
16 been apparently on her own anyway. And I don't  
17 know of any business or family responsibility that  
18 she may have at this time that would require any  
19 delay.

20 MR. DILLER: She does work.

21 THE COURT: So that --

22 MR. DILLER: She does work and it so happens --

23 THE COURT: I am not talking about her  
24 position which you indicated earlier she has just  
25 obtained.

1  
2 MR. DILLER: Well, there are personal things  
3 that she would have to take care of. Her father  
4 is coming into the city today, who doesn't know  
5 what --

6 THE COURT: I gathered that from the report  
7 that she has not informed --

8 MR. DILLER: I think it would be better  
9 for the family if she were able to tell them  
10 rather than to have him find it out from me that  
11 his daughter is in jail. I don't think we will  
12 be losing anything by giving her two weeks to  
13 surrender herself. She doesn't present any risk.

14 THE COURT: That isn't the point.

15 Miss O'Brien, do you have any objection?

16 MISS O'BRIEN: I have no objection.

17 THE COURT: I am not going to give her two  
18 weeks. So long as the Government has no objection  
19 to a stay of execution here, and finding no reason  
20 not to grant her a short time since her parents  
21 are coming in -- when?

22 MR. DILLER: Tonight. Let her have one  
23 week, please.

24 THE COURT: That is the most I will do.  
25 Today is Monday, the 25th. Monday, April 1st.

MR. DILLER: She will surrender directly to



1 the Marshal's Office.

2 THE COURT: Next Monday, April 1, I believe  
3 it is.

4 THE CLERK: Yes.

5 THE COURT: Next Monday at 3:00 p.m.

6 MR. DILLER: Or sooner.

7 THE COURT: Or sooner to that date. I mean  
8 that's the outside limit. Three p.m. on Monday  
9 to surrender to the marshal here in this building.

10 MR. DILLER: Downstairs?

11 THE COURT: Downstairs. For the commencement  
12 of her sentence.

13 Okay.

14 MR. DILLER: Thank you for your consideration.

15 THE COURT: Bail continued until Monday.

16 MR. DILLER: Thank you.

17 (Recess taken.)

18 THE COURT: May the record also indicate  
19 in addition to the sentence imposed, the Court  
20 imposes a special parole term of three years.

21 That's all that is necessary, isn't it,  
22 Mr. Probation Department?

23 PROBATION OFFICER: That is correct.

24 THE COURT: All right, very good.

25 MISS O'BRIEN: Good afternoon.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

-against- :

74-CR-119

LINDA SCHWARZ, :

Defendant. :

-----X

United States Courthouse  
Brooklyn, New York

April 5, 1974

**B e f o r e :**

HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

EMANUEL KARR  
OFFICIAL COURT REPORTER

I hereby certify that the foregoing is a  
true and accurate transcript from my sten-  
ographic notes in this proceeding.

\_\_\_\_\_  
Official Court Reporter  
U. S. District Court



**Appearances:**

EDWARD J. BOYD, V, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: JOAN O'BRIEN, ESQ.  
Assistant U.S. Attorney

HOWARD J. DILLER, ESQ.  
Attorney for Defendant

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THE CLERK: Motion, matter of Linda Schwarz.

THE COURT: Mr. Diller, it is your turn.

MR. DILLER: Judge, we are here for a simple application and humbly before your Honor again --

THE COURT: I like the way you put it.

MR. DILLER: We respectfully request that your Honor see fit to continue her on her own recognizance pending the expeditious handling of the appeal in this matter, and it will be done quickly, and I think we should have it all in within the month, and I would ask she be accorded the opportunity to be at large pending the determination of the appeal as in so many other cases where people are either on bail or on their own recognizance pending the Second Circuit rendering its determination with respect to the matter before it.

There is no risk situation with respect to her. Your Honor gave her a week, she sure enough came in on her own power and surrendered to the marshal.

THE COURT: Don't say that she didn't ask to continue the stay.

MR. DILLER: I didn't know that.

THE COURT: There was a request to continue the stay of execution, which I denied.



1  
2 MR. DILLER: I wasn't aware of that.

3 THE COURT: I directed her to surrender as per  
4 my order, which he did.

5 MR. DILLER: Yes.

6 THE COURT: Well, first of all, before I ask  
7 you anything, Miss O'Brien, I am looking at your  
8 affidavit, Mr. Diller, and you might as well refer to  
9 it.

10 MR. DILLER: I am sorry.

11 THE COURT: Please refer to your affidavit so  
12 we can follow each other on it.

13 MR. DILLER: Yes.

14 THE COURT: First of all, I have got to say  
15 that this is an appeal from a plea.

16 MR. DILLER: From a judgment, actually.

17 THE COURT: A judgment entered on a plea of  
18 guilty.

19 MR. DILLER: Yes.

20 THE COURT: This is not a judgment entered  
21 after a jury verdict of guilty where the provisions  
22 are a little bit different and where the appeal is  
23 considered on a different basis.

24 MR. DILLER: That is true enough.

25 THE COURT: I want to make that clear first.

1           The question of whether or not there is  
2           meritorious appeal from such a judgment is a little  
3           different insofar as the consideration is concerned,  
4           than it is from an ordinary appeal after judgment.

5           MR. DILLER: Well, we are well aware --

6           THE COURT: You understand me real well, and  
7           whether or not I feel that there is a meritorious  
8           appeal here I think is an area for me to decide, it  
9           is different than if it were from a judgment that  
10          followed a conviction on a trial for in such cases  
11          if it went to the jury and the jury expressed its  
12          verdict then there may be a question as to whether  
13          or not they were right or whether I were right or  
14          whether either of us were right. In this case it  
15          was her own voluntary act --

16          MR. DILLER: Yes.

17          THE COURT: Through you.

18          MR. DILLER: Yes, sir.

19          THE COURT: She pleaded guilty in this case,  
20          so insofar as the facts presented by that picture,  
21          up to then, well, I don't know what right you have  
22          to appeal.

23          Now, insofar as merit is concerned, the  
24          merits are zero until we discussed the matter of  
25          sentence, which is what she did not like and which is



what you do not like --

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6

MR. DILLER: Yes.

THE COURT: That is the only question for appeal, and of course sentence is discretionary with the District Judge who imposes it.

I don't think even the Court of Appeals will dare say that I don't have that discretion. They might think that I injudiciously or in some other fashion exercised that discretion, but it is reaching pretty far down in the barrel when you go that far.

The question here is that you did not like that I refused to sentence under the Youth Corrections Act.

MR. DILLER: That is about the size of it, your Honor.

THE COURT: All right.

Now Judge Mishler, who took the plea, and which you indicate in your first paragraph, permitted you on your application to have it brought on for sentencing before the date on which he would become 26, which was a day or two before sentence --

MR. DILLER: One day.

THE COURT: And then you stopped there.

MR. DILLER: I was not trying to imply that Judge Mishler indicated --

THE COURT: I want the record clear that

1 Judge Mishler, and I am sure he made it very, very  
2 clear that he was not by doing what he did, bringing  
3 it on for sentence before that date, that he meant to  
4 infer either to you or to the defendant or to the  
5 sentencing judge --

6 MR. DILLER: That was clear.

7 THE COURT: (Continuing) -- anything other than  
8 the fact that she would be eligible, in the discretion  
9 of the Court, to receive that treatment: right?

10 MR. DILLER: Yes, I didn't mean to imply that.  
11 I never did.

12 THE COURT: In view of the fact that that  
13 paragraph, which is what I was going to question you  
14 about, leaves that in doubt, I want to nail that  
15 immediately.

16 Okay?

17 Now let us go to the next paragraph.

18 Then you talk about the defendant after her  
19 arrest being arraigned, etc., etc., and was put on  
20 bail.

21 Then of course there is a recitation of the  
22 facts, it is true, and then you say that both  
23 Judge Mishler and Judge Travia continued the same  
24 release conditions, which I did in fact, and not only  
25 did I do that but even continued her release conditions



1 after the plea and after the sentence was imposed to  
2 give her an opportunity to surrender at a later date,  
3 and that ended at some time, certainly that ended at  
4 the time she was directed to surrender.

5 Now you say there are meritorious issues --

6 So far we are in agreement, right?

7 MR. DILLER: That is correct, yes.

8 THE COURT: Okay.

9 Then comes the punch, right, that there are  
10 meritorious issues to be raised in appeal especially  
11 with respect to the applicability of the holding in  
12 United States against Willy Glen Hopkins decided by  
13 the United States Court of Appeals on February 11, 1974.

14 MR. DILLER: Right.

15 THE COURT: Then you speak of the apparent  
16 uncorroborated and unfair statements concerning the  
17 defendant's involvement in drug trafficking as appears  
18 in her pre-sentence report.

19 Now there you and I are going to take issue as  
20 to whether or not this is a meritorious case for  
21 appeal.

22 I have to make that decision now.

23 MR. DILLER: Let me say this with respect to  
24 the report. I neglected the last time at sentencing  
25 to perhaps more eloquently to --

1 THE COURT: Oh, no, Mr. Diller, don't at this  
2 stage of the game try to cop a plea because I won't  
3 accept that plea. I might with someone less learned  
4 in the law, less experienced as a lawyer, but you  
5 have been before me and have plenty of experience, I  
6 don't think you leave a page unturned, you were in  
7 possession of that pre-sentence report, you discussed  
8 it with her and --

9 MR. DILLER: Yes.

10 THE COURT: (Continuing) And I asked you like  
11 I ask any defendant, Is there anything in that report  
12 which is inconsistent with the facts as you know them  
13 and if there is, please explain.

14 MR. DILLER: I pointed them out, I think there  
15 were four points.

16 THE COURT: And we discussed them.

17 MR. DILLER: One of the things after I left  
18 dawned on me and that is this:

19 You know I pressured this case, I pressured it  
20 to expedite it because of the birthday situation,  
21 we also pressured --

22 THE COURT: I was even going to adjourn it  
23 because I felt that I wanted the help that is  
24 accorded to me under our system in this court, which  
25 does not prevail in most courts in the country, namely



1 the pre-sentence panel discussion with my confreres,  
2 followed by their recommendations, and then the  
3 sentencing judge makes his decision. I had asked you  
4 to adjourn it to give me that opportunity and you at  
5 first said no because you were anxious to get it done --

6 MR. DILLER: Only because --

7 THE COURT: Because of her age, and I told you,  
8 okay, I will ask the judges to do it for me before  
9 the scheduled date of the pre-sentence panel conference,  
10 and I did that, and I asked the two judges and I  
11 talked to the two judges who were with me on that  
12 panel and I had their recommendations and I then put  
13 it on for the day that you wanted so there would be no  
14 question, and I told you then, too, didn't I, that  
15 based upon my confreres' recommendations and upon the  
16 report that I had before me and my understanding of  
17 the facts and circumstances in this case, that based  
18 on all of that I made the decision that she would not --

19 MR. DILLER: Benefit.

20 THE COURT: Benefit from my discretionary  
21 power to use the YCA.

22 Now, I don't know what sentencing means to you  
23 but I think it means an awful lot to me, especially  
24 when you cite to me the Hopkins' case, which I also  
25 discussed with you --

1 MR. DILLER: At length, at length.

2 THE COURT: In other words, I certainly was not  
3 know e of that decision, and I think I pointed out to  
4 you a couple of words in that decision which were very,  
5 very apropos, namely that no litany need be set forth  
6 to give the judge reasons as to why he did not  
7 exercise his discretion, that is if I had abused my  
8 power and just said, To hell with you, I am not going  
9 to give it to you because I don't like you.

10 Now you could say that the judge is "nuts," but  
11 I had all my faculties available to me and I looked at  
12 it very thoroughly and there was colloquy between us  
13 on the record, and there might have been some  
14 words that you might not have agreed with, but in  
15 substance that report was a very good report.

16 You were given the opportunity --

17 MR. DILLER: Do you know what the report  
18 really was --

19 THE COURT: Well, a report is the subject of  
20 conversation between the Probation officer and the  
21 defendant, much of what was in that report was her  
22 own statement, and you yourself know indeed that she  
23 is present, that there are no threats, etc., and that  
24 she gave all of the information that she had to give,  
25 and she was --



1 MR. DILLER: Cooperative.

2 THE COURT: Cooperative. So I don't know what  
3 is in that report --

4 MR. DILLER: Let me explain.

5 THE COURT: I looked over that report very  
6 carefully .

7 MR. DILLER: Let me explain what I have  
8 reference to.

9 There are two things, the first that the  
10 Probation Department was pressured in the time sequence  
11 to get the report concluded. We pressured her because  
12 we had to have it in before the 22nd. Normally, it  
13 would take, what, six weeks, and in the case here I  
14 think we chopped two weeks off.

15 Now the more important thing is --

16 THE COURT: All I know is it is a complete  
17 report.

18 MR. DILLER: It is complete because they  
19 conferred with the arresting officer.

20 THE COURT: If anything, that report gives you  
21 her story.

22 MR. DILLER: The arresting officer's.

23 THE COURT: And it is favorable to her.

24 MR. DILLER: It quotes, it quotes the arresting  
25 officer, the agent's attitude at length.

1 THE COURT: Don't you think that the Probation  
2 Department has the right to ask them for their side  
3 of the case the same as they ask for her side, or  
4 should they ignore it completely and also what the  
5 charge was, and don't forget, the charge is traffick-  
6 ing in narcotics --

7 MR. DILLER: That is true --

8 THE COURT: (Continuing) -- or drugs, whichever  
9 word you like.

10 MR. DILLER: Cocaine.

11 THE COURT: And it is not, by the way, the  
12 kind of a case that Glen Hopkins afforded to the  
13 Court of Appeals, and in fact the Court of Appeals in  
14 that decision, as I recall, said that that doesn't  
15 mean this has to be done in all cases, that there are  
16 other cases when it doesn't have to be said at all,  
17 you can just say no.

18 MR. DILLER: I think there are statistics as  
19 to sixty-two per cent of the cases.

20 THE COURT: I know that case, so don't worry,  
21 if you want a copy of it I have it all the time, I  
22 carry it with me and if any lawyer tells me that the  
23 case says something that I know it doesn't say I tell  
24 him to look at it and to show it to me.

25 MR. DILLER: Regrettably I have had the



1 experience of being an agent, too, and when the  
2 Probation Department came to me --

3 MISS O'BRIEN: "Regrettably."

4 THE COURT: You are helping your cause a great  
5 deal.

6 MR. DILLER: I used to tell them, This defendant  
7 is very much involved and puff a bit, and they have  
8 quoted at length the agent's characterization that  
9 she was a medium-sized trafficker, and this is realis-  
10 tically not consistent --

11 THE COURT: In physical stature or --

12 MR. DILLER: She has been involved in traffick-  
13 ing, and I know, if your Honor please, that you are  
14 really a true believer --

15 THE COURT: What, what?

16 MR. DILLER: You really believe that Linda  
17 Schwarz is --

18 THE COURT: Don't tell me what I believe. I  
19 just believe what she pleaded guilty to.

20 MR. DILLER: She confessed.

21 THE COURT: On her plea, and she confessed to  
22 that because I asked a lot of questions about that and  
23 she had no objection because if she did I would have  
24 given her plea back.

25 MR. DILLER: You offered it.

1 THE COURT: I am very quick to give back a  
2 plea if there is any question that they didn't know  
3 the full import of what they were doing.

4 You heard one this morning, if you were here.

5 MR. DILLER: Yes, yes.

6 THE COURT: A doctor, and do you know, he knew  
7 what he said the first time, let alone the second time,  
8 but because of a question he raised he wanted out and  
9 one month later he was back pleading again.

10 I just want to show you I am very quick to give  
11 back a plea, I would have given it to her.

12 MR. DILLER: No, no, no.

13 THE COURT: This girl is not the usual run-of-  
14 the-mill girl, she is no dope, and I am not making a  
15 pun with that word "dope," she is no ordinary girl  
16 that doesn't know what she was doing, she is a bright  
17 girl.

18 MR. DILLER: Yes, yes, and a very good girl,  
19 she hadn't been involved with anything --

20 THE COURT: She was involved this time.

21 MR. DILLER: Yes.

22 THE COURT: I will take it to whatever extent  
23 you say she was involved in.

24 MR. DILLER: Would we be really losing anything  
25 in letting her out?



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THE COURT: Yes, you would, because she is serving her time faster, she will be using up this time towards the judgment of conviction --

MR. DILLER: Well --

THE COURT: In other words, what if the Court of Appeals gives you bail pending appeal or even remands and says, There ought to be the litany on this case rather than something else --

MR. DILLER: Obviously, we don't know what the Court of Appeals will do, but the attitude has generally been --

THE COURT: They can only remand for reconsideration of the YCA --

MR. DILLER: Right.

THE COURT: Secondly, Mr. Diller, I don't know whether I have jurisdiction now since you filed a notice of appeal.

MR. DILLER: I went over that with the Court of Appeals, the Court of Appeals doesn't have jurisdiction, you do.

THE COURT: After you've filed your notice of appeal, they do not have jurisdiction?

Do you know where the file is right now, do you know where it is?

MR. DILLER: Probably at the Court of Appeals.

1           Only the District Court has jurisdiction in the  
2 first instance.

3           THE COURT: Not on bail pending appeal, you are  
4 wrong, it maybe is that we have equal right because it  
5 was my judgment that I signed and I could stay the  
6 execution until the appeal, but that is another story,  
7 that is a horse of a different color.

8           MR. DILLER: The Court of Appeals will ask me  
9 what Judge Travia thought about it.

10          THE COURT: I can tell you what to advise the  
11 Court of Appeals if they want to know what my judgment  
12 is with regard to this appeal and whether bail should  
13 be granted. You can tell them that the way I feel  
14 about this case and my judgment of this case, that on  
15 the basis of the colloquy that was had between us at  
16 the time of sentence and since I extended the execu-  
17 tion for the short period of time after that, after  
18 giving a prison sentence, that I don't intend to  
19 extend it any further and that I would not grant bail  
20 pending appeal in this case, and that the Court of  
21 Appeals has the power to grant it on their own, if  
22 they wish, but not on the basis of my remarks.

23          MR. DILLER: Could you ask the Government  
24 prosecutor what her position is?

25          MISS O'BRIEN: I think it is stated there.



THE COURT: Yes, the Government's position<sup>18</sup>  
is not going to be any different than what it says in  
your affidavit, and that is that Miss O'Brien --  
Ms., Ms. O'Brien, the Assistant United States Attorney  
stated on April 1st to the affiant that the United  
States Attorney has no objection, that she has no  
objection to the defendant being released on her own  
recognizance pending appeal, and that is all, she has  
no objection.

I do.

MR. DILLER: Your Honor --

THE COURT: The answer is the motion is denied.

MR. DILLER: Okay.

MS. O'BRIEN: Thank you, your Honor.

MR. DILLER: Thank you.

THE COURT: Okay.

\* \* \*